

OGC Has Reviewed

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1. The question has arisen as to authorities under which the Agency disposes of property.

a. Dealing first with personal property which is owned directly by the Agency and which is nominally governed by the Federal Property and Administrative Services Act of 1949, as amended, our procedures are generally in accordance with that Act except as to property which cannot be practicably disposed of through GSA channels. In those cases where it is not practical to dispose of property through GSA, the Agency, in accordance with the exemption given to it under U.S. Code Annotated Section 474(17), would dispose of property through commercial practices as described below.

Property which is surplus to the needs of the holding component is made available first to other components within the Agency, then to GSA unless disposition to GSA would impact the security or functions of the Agency's operations adversely. If the property cannot be used by GSA, it is disposed of on the best commercial terms.

Property held by proprietaries is disposed of in accordance with the normal commercial practice in the proprietary's locality and in accordance with the terms of the Administrative Plan.

The Manual for the Administration of Government Property in the Possession of Agency Contractors (page 8) outlining this procedure spells out the procedures followed by the Supply Division and the Central Supply Depot in disposing of surplus property.

Based on Agency procedures described above, the property disposed of through GSA is handled in accordance with existing authority. Disposal through other methods normally would involve special security or other considerations and would be handled under Section 8 of the CIA Act.

In conclusion, while we feel that property is being legally disposed of within existing authority, it could be helpful to provide more specific legislative authority for Agency property transactions.

b. On the subject of real property, 40 USC 304a gives the Administrator of GSA the power to dispose of, assign, or reassign property reported excess by any Federal agency.

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As pertains to real property disposed of by the Agency, the Director of Logistics under [REDACTED] is delegated the power to dispose of the Agency's surplus operational real property except where such authority has been further delegated to certain subordinates.

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Excess real property that is obtained by or through Government services is reported to GSA according to and in conformity with FPMR 101-47.202-2, and is subsequently handled through GSA.

2. With regard to the fact that the language of Section 3 of the CIA Act does not permit the Agency to exercise the authority in amendments to the Armed Services Procurement Act, we concur that change is necessary. It is noted that our own internal regulation [REDACTED] already states in part ". . .it will be accomplished in general conformity with the procedures and standards by which Federal procurement is conducted by the GSA or the DoD as evidenced by the 'Federal Procurement Regulation' and the Armed Services Procurement Regulation as they now exist or may be amended."

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IX CIA LEGISLATIVE OBJECTIVES

The present language in the National Security Act and Central Intelligence Agency Act could stand substantial improvements. As it is inevitable that changes will be made to these Acts, the Executive Branch must seek the initiative in these areas. Some of the key issues for legislative address are:

A. Restrictions on Domestic Activities

A primary legislative objective, shared with the Congress, is the classification of what are legitimate activities for CIA in the United States. The only language in the present statute is in section 102(d)(3) of the 1947 Act: "The Agency shall have no police, subpoena, law enforcement powers, or internal security functions." This section has proven unsatisfactorily vague. The new language should specify what powers and functions are precluded to the Agency, and hopefully will specify authorized activities in the United States. Previous bills drafted by the Agency and the proposed Executive Order, should be the starting point.

B. Clarification of the Director's Responsibility to Protect Intelligence Sources and Methods

Critics of the Agency are sure to demand changes in the Director's responsibility, as this responsibility has been cited as the basis for certain Agency actions of questionable propriety. Some spokesmen have argued that this language should be dropped as such a responsibility is inherent in foreign intelligence duties. The Rockefeller Commission has cited the need to clarify the extent of the Director's authority in the United States, and has proposed language as a substitute to the present statement in section 102(d)(3) of the Act. The Agency concurred in this recommendation. The Agency should seek clarification of the Director's responsibility, but must insure that any new language: (1) does not limit the Director's responsibility to foreign intelligence sources and methods; (2) does not unduly restrict the Director's alternatives vis-a-vis Agency employees, applicants, former employees, and those directly associated with the Agency in other ways; (3) does not restrict overseas activities; (4) is retained by the Director rather than shifted to the Agency (as proposed by the Rockefeller Commission); and (5) remains an exemption statute for Freedom of Information purposes. Again, the proposed Executive Order could be the guide.

In addition, one of our primary legislative goals should be to win adoption of the Director's proposal to add criminal sanctions for the unauthorized disclosure of intelligence sources and methods.

C. Covert Action

Section 662 of the Foreign Assistance Act restricts the Agency from non-intelligence gathering activities unless the President finds that each such proposed operation is important to the national security, and reports his findings to the appropriate committees of Congress. The Agency must seek repeal of this section because: (1) the existence of this provision in the Foreign Assistance Act has created a situation whereby this authorization act is an annual vehicle for offering covert action amendments, both general and specific amendments aimed at activities in certain countries; (2) many commentators have stated it is unwise to tie the President so directly to these covert activities, and (3) too many committees (six) are receiving this information, thereby substantially increasing the possibility of leaks. Section 662 should be replaced with a general amendment to section 102(d)(5) of the Act, which would require all activities undertaken pursuant to that section to be reported to the oversight committees.

D. Statutory Duties of the DCI and CIA

The Agency should seek to make clear what its present-day charter is. The duties set forth for the Agency in subsections 102(d)(1) - (5) in some cases no longer apply, while other fundamental responsibilities (e.g. collection of intelligence) are not reflected in the Act.

E. Role of the Director

If it is concluded that the Director needs more authority for the intelligence community or that the office should be somehow reorganized (e.g. along the lines of the proposals suggested in the Taylor report), then changes should be reflected in statute.

F. Express Authority to Administratively Adopt Certain Provisions of Law Relating to Other Agencies

Because the Agency is not subject to an annual authorization, we have not had a vehicle in which to add changes in personnel policy to our statute such as are added every year for the foreign

service officers by the State Department Authorization Bill. The Agency has taken the position that under the penumbra of sections 8(a)(1) and (2) of the CIA Act, the Director has the authority to administratively adopt these provisions of law for CIA employees. However, this theory has been recently challenged and the Agency should therefore seek express authority on this point.

G. Procurement

There are at least two weaknesses in our present procurement authorities. One is that there is no express authority to dispose of property. GSA has recently attacked the sale of the equipment of an Agency proprietary on this point. Second, the language of section 3 of the 1949 Act does not permit the Agency to exercise the authority in amendments to the Armed Services Procurement Act. Altering the language of section 3 would rectify this situation.

H. Conflict with the Securities and Exchange Commission

The ability of American corporations to assist the Agency by providing cover for Agency officers and to provide other services, without disclosure to the companies' stockholders, has recently been challenged by the Securities and Exchange Commission. If the SEC rules that these activities must be disclosed to stockholders (which would foreclose the Agency from using these companies in any manner), CIA should seek language in its statute making clear that cooperation with CIA by American businesses does not come under the compliance and inspection requirements of the SEC.

I. Conflict with Sundry Laws

A number of Agency activities such as alias documentation are in technical violation of numerous Federal and state laws. The Agency should seek congressional recognition of this fact, which can hopefully be implied as congressional approval, perhaps in legislative history.

J. Housekeeping

The present statutes, particularly the CIA Act, are replete with outdated references such as reference to laws which have since been repealed. These should be eliminated.